

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL JAY PEREZ,

Plaintiff,

v.

KATHRYN GRAY et al.,

Defendants.

CASE NO. 2:21-cv-00095-LK

ORDER DENYING JOINT
MOTION TO CONSOLIDATE
CASES

This matter comes before the Court on the parties' joint motion to consolidate cases. Dkt. No. 113. The parties seek to consolidate this case with *Perez v. Strange*, 3:23-CV-05008-JHC-SKV (W.D. Wash.). *Id.* at 1. For the reasons stated below, the Court denies the parties' motion.

I. BACKGROUND

Plaintiff Daniel Jay Perez initiated this civil rights lawsuit pro se and *in forma pauperis* ("IFP") in early 2021, challenging Defendants' allegedly retaliatory conduct during his ongoing incarceration at the Monroe Correctional Complex ("MCC"), culminating in his transfer out of E-Unit. *See* Dkt. Nos. 1, 5, 42. On March 30, 2023, the Court adopted in part the Report and Recommendation of United States Magistrate Judge David W. Christel regarding Defendants'

1 motion for summary judgment, allowing some of Mr. Perez’s First Amendment retaliation claims
2 to proceed against Defendant Kathryn Grey. *See generally* Dkt. No. 109. The Court also directed
3 the parties to meet and confer and to file a joint status report proposing a trial date and pretrial
4 deadlines. *Id.* at 38. Following the Court’s Order on summary judgment, Mr. Perez retained
5 counsel in this case. Dkt. No. 111.

6 Separately, in early 2023, Mr. Perez filed another lawsuit pro se and IFP, claiming that
7 Department of Corrections and MCC staff violated his constitutional rights under the Eighth
8 Amendment by acting with deliberate indifference toward his medical and mental health needs.
9 *See Perez v. Strange*, Dkt. No. 7. Defendants filed an answer in that case on April 10, 2023, and
10 the Court entered a pretrial scheduling order on May 2, 2023. *See id.*, Dkt. Nos. 30, 35.

11 II. DISCUSSION

12 A. Legal Standard

13 Federal Rule of Civil Procedure 42(a) provides that courts may consolidate cases if they
14 involve common questions of law or fact. Rule 42(a) affords courts broad discretion in making
15 such determinations. *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487 (9th Cir. 1987). When
16 evaluating the appropriateness of consolidation, the Court considers several factors, “including
17 judicial economy, whether consolidation would expedite resolution of the case, whether separate
18 cases may yield inconsistent results, and the potential prejudice to a party opposing consolidation.”
19 *First Mercury Ins. Co. v. SQI, Inc.*, No. C13-2110-JLR, 2014 WL 496685, at *2 (W.D. Wash. Feb.
20 6, 2014). Importantly, “Rule 42 does not mandate consolidation simply because two cases happen
21 to involve common questions of law and fact.” *Micklesen v. Watkins & Shepard Leasing, LLC*,
22 No. 4:13-CV-00518-REB, 2015 WL 6456552, at *1 (D. Idaho Oct. 26, 2015). For instance,
23 “[c]onsolidation may be inappropriate where two cases have been proceeding on two vastly
24

1 different schedules to trial.” *Ultimate Timing, L.L.C. v. Simms*, No. 2:08-CV-01632-MJP, 2010
2 WL 1881868, at *2 (W.D. Wash. May 10, 2010).

3 **B. Consolidation is Inappropriate in Light of the Differences in Mr. Perez’s**
4 **Substantive Claims and the Procedural Posture**

5 The parties contend that joining this action with *Perez v. Strange* is appropriate because
6 “the cases share common questions of law and fact” and consolidation would “benefit the parties.”
7 Dkt. No. 113 at 1.

8 With respect to the questions of law and fact raised in the respective cases, the Court agrees
9 that Mr. Perez’s more recent lawsuit contains overlapping factual allegations with this action. *See*,
10 *e.g.*, Dkt. No. 42 at 43–47 (describing the allegedly retaliatory motivations behind Mr. Perez’s
11 MCC unit transfer in 2021); *Perez v. Strange*, Dkt. No. 7 at 12–21 (describing the circumstances
12 surrounding the same transfer). However, the thrust of Mr. Perez’s new complaint appears to be
13 based on the inadequacy of his medical and mental health treatment following his transfer. *Perez*
14 *v. Strange*, Dkt. No. 7 at 21–31. And whereas Mr. Perez advances a First Amendment retaliation
15 claim in this case, as noted above, he alleges an Eighth Amendment deliberate indifference claim
16 in *Perez v. Strange*. *Id.* at 30–31. Moreover, Mr. Perez’s remaining claims in this case are against
17 Kathryn Grey, who is not a named Defendant in *Perez v. Strange*.

18 Further, the parties’ arguments as to the benefit of consolidation are unavailing. They
19 maintain that if the cases were consolidated, (1) Mr. Perez would have “access to counsel as to all
20 claims,” (2) the parties would be able “to conduct more rigorous discovery than has previously
21 occurred in this case,” including depositions, and (3) the Court would avoid addressing Mr. Perez’s
22 claims “piecemeal, without an understanding of the ‘big picture[.]’” Dkt. No. 113 at 2. None of
23 these reasons are persuasive. First, Mr. Perez’s newly retained counsel is free to enter an
24 appearance in *Perez v. Strange* if so desired by Mr. Perez and counsel. Second, the discovery

1 deadline in this case expired approximately 20 months ago, Dkt. No. 36, and the Court has already
2 resolved Defendants' motion for summary judgment, Dkt. No. 109. Despite this, and the fact that
3 trial is on the horizon, *id.* at 38, the parties make no attempt to satisfy the standard for reopening
4 the case schedule by demonstrating that their failure to complete discovery within the time allotted
5 was due to excusable neglect, Fed. R. Civ. P. 6(b)(1)(B). *See also* Dkt. No. 75 (denying Mr. Perez's
6 November 2021 motion for extension of time to complete discovery); *Hartman v. United Bank*
7 *Card, Inc.*, 291 F.R.D. 591, 595 (W.D. Wash. 2013) (deciding "based on twenty-twenty hindsight"
8 that decision to delay or forgo individual's deposition was error, or that more discovery should
9 have been conducted at earlier time, was not excusable neglect); *Excel Fortress Ltd. v. Wilhelm*,
10 No. CV-17-04297-PHX-DWL, 2018 WL 6067255, at *7 (D. Ariz. Nov. 20, 2018) (denying motion
11 to consolidate and noting that consolidation would provide the plaintiffs "a second bite at the
12 discovery apple"). Finally, these two cases are in "significantly different procedural posture[s],"
13 which weighs against consolidation. *Reed v. Kariko*, No. 3:20-CV-05580-BHS-DWC, 2020 WL
14 6781475, at *2 (W.D. Wash. Nov. 18, 2020); *see also* *Rubio v. King Cnty.*, No. C16-1269-JCC-
15 JPD, 2017 WL 2172014, at *2 (W.D. Wash. May 17, 2017); *Ultimate Timing*, 2010 WL 1881868,
16 at *2. If the Court were to reopen discovery—long after the September 2021 discovery completion
17 deadline and the December 2021 dispositive motions deadline—it would substantially disrupt the
18 orderly disposition of this case.

19 Accordingly, the Court finds that any factual commonalities between the two cases are
20 outweighed by the differences in Mr. Perez's substantive claims and considerations of judicial
21 economy and expediency. To the extent that the parties are interested in pursuing a global
22 resolution as to both cases through mediation or a settlement conference before a Magistrate Judge,
23 they may indicate such preference in their joint status report due June 1, 2023. Dkt. 109 at 38.

III. CONCLUSION

For the reasons discussed herein, the parties' motion to consolidate, Dkt. No. 113, is
DENIED.

Dated this 19th day of May, 2023.



Lauren King
United States District Judge